



Dora
Department of Regulatory Agencies

MARKET CONDUCT VERIFIED EXAMINATION REPORT
Dated September 20, 2011

COVERING THE PERIOD OF JANUARY 1, 2009 THROUGH
DECEMBER 31, 2009

AVIVA LIFE & ANNUITY COMPANY

611 Fifth Avenue
Des Moines, IA 50309

NAIC Company Code: 61689
NAIC Group Code: 044



CONDUCTED BY:

COLORADO DIVISION OF INSURANCE

**AVIVA LIFE & ANNUITY COMPANY
611 Fifth Avenue
Des Moines, IA 50309**

**MARKET CONDUCT VERIFIED EXAMINATION REPORT
DATED SEPTEMBER 20, 2011
COVERING THE TIME PERIOD OF JANUARY 1, 2009 THROUGH DECEMBER 31, 2009**

Examination Performed by:

State Market Conduct Examiners

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COMPANY PROFILE

The following is taken directly from written documentation provided by Aviva and has not been independently verified by the Division:

Aviva USA Corporation (Aviva USA), headquartered in West Des Moines, Iowa, is an indirect wholly owned subsidiary of Aviva, a public limited company incorporated under the laws of England and Wales. Aviva USA's principal insurance company subsidiary, Aviva Life and Annuity Company is domiciled in Iowa and is licensed and writes products in all U.S. states, except New York, and in the District of Columbia.

Aviva USA and its subsidiary insurers have two operating segments, protection products and asset accumulation products. Through the protection products segment, Aviva USA and its subsidiary insurers offer customers traditional life insurance products, including interest-sensitive whole life and term life insurance, universal life insurance and indexed universal life insurance. Through the asset accumulation products segment, Aviva USA and its subsidiary insurers offer individual deferred fixed annuities, including indexed annuities.

Individual contracts in-force as of December 31, 2009:

Life:	10,924
Annuity:	2,269

Individual premium as of December 31, 2009:

Total:	\$193,704,000*
Life:	\$21,298,000*
Annuity:	\$165,673,330*

Market Share:

Total: (as a percentage of Colorado Total Life, Accident & Health)	1.65%*
Life:	1.35%*
Annuity:	5.02%*

All data shown as reported to the Division for the year ending December 31, 2009.

*As shown in the 2009 edition of the Colorado Insurance Industry Statistical Report.

PURPOSE AND SCOPE

State market conduct examiners with the Colorado Division of Insurance (“Division”), who were assisted by an independent contract examiner, reviewed certain business practices of Aviva Life and Annuity Company (“Aviva”). This market conduct examination (“MCE”) was conducted in accordance with Colorado insurance laws, §§ 10-1-201, 10-1-203, 10-1-204, 10-1-205 and 10-3-1106, C.R.S., which empower the Commissioner to examine any entity engaged in the insurance business. All work product developed in producing this report is the sole property of the Division.

The purpose of the examination was to determine Aviva’s compliance with Colorado insurance laws related to its life and annuity insurance business in Colorado. MCE information contained in this report will serve only these purposes, except as otherwise provided by law pursuant to §§ 10-1-204 and 205. The findings and conclusions, including the Final Agency Order arising out of this MCE, shall be a public record.

Examiners conducted the MCE in accordance with procedures developed by the Division, based on model procedures developed by the National Association of Insurance Commissioners. The examiners relied primarily on records and materials maintained and/or provided by Aviva. The MCE covered the period from January 1, 2009, through December 31, 2009.

The MCE included review of the following:

- Company Operations and Management
- Marketing and Sales
- Complaints
- Contract Forms
- Producers
- Underwriting: Applications and Declinations
- Policyholder Services
- Claims

This report is written by exception. References to additional practices, procedures, or files that did not contain any improprieties were omitted. Based on review of these areas, comment forms were prepared by the examiners and provided to Aviva. The comment forms set forth any concerns and/or discrepancies identified by the examiners during the course of the examination. The comment forms contain a section that permits Aviva to submit a written response to each of the examiners’ comments.

For the period under examination, the examiners included statutory citations and regulatory references related to insurance laws as they pertained to life and annuity insurance companies. MCE findings may result in administrative action by the Division. Examiners may not have discovered all unacceptable or non-complying practices of Aviva. Failure to identify specific company practices does not constitute acceptance of such practices. This report should not be construed to either endorse or discredit any insurance company or insurance company product.

METHODOLOGY

The examiners reviewed Aviva's business practices to determine compliance with Colorado insurance law as outlined below.

Statute or Regulation	Subject
Section 10-1-128, C.R.S.	Fraudulent insurance acts - immunity for furnishing information relating to suspected insurance fraud - legislative declaration.
Section 10-3-1104, C.R.S.	Unfair methods of competition - unfair or deceptive acts or practices.
Section 10-7-102, C.R.S.	Life insurance policies – requirements.
Section 10-7-103, C.R.S.	Life insurance policies – prohibition.
Section 10-7-109, C.R.S.	Suicide no defense for nonpayment.
Section 10-7-112, C.R.S.	Interest payable on benefits or proceeds.
Section 10-7-202, C.R.S.	Policy provisions.
Section 10-7-302, C.R.S.	Compulsory policy provisions.
Insurance Regulation 1-1-7	MARKET CONDUCT RECORD RETENTION
Insurance Regulation 1-1-8	Penalties and Timelines Concerning Division Inquiries And Document Requests
Insurance Regulation 4-1-4	REPLACEMENT OF LIFE INSURANCE POLICIES AND ANNUITIES
Insurance Regulation 4-1-11	CONCERNING SUITABILITY IN ANNUITY TRANSACTIONS
Insurance Regulation 6-4-1	Privacy Of Consumer Financial And Health Information

Sampling Methodology

In accordance with the sampling methodology and sample sizes as set forth in the 2010 NAIC Market Regulation Handbook ("Handbook"), the examiners reviewed all files that were randomly selected to constitute the samples of files from a larger population of files. Aviva provided unique populations of annuity sales/marketing materials, life and annuity new business, life declinations, life and annuity replacements and life and annuity claims. In those instances where sampling was required, the examiners used ACL™ software or Microsoft Excel's Random Number Generator (RAND) to select random samples from the total populations.

When sampling was involved, the examiners established a minimum error tolerance level of seven percent (7%) for claims and ten percent (10%) for other samples, per the Handbook, to determine reportable exceptions. However, if the examiners determined an issue was systemic, or the sampling process precluded establishment of an exception percentage, they did not utilize a minimum error tolerance percentage.

The examiners allowed an error tolerance level of plus or minus ten dollars (\$10.00) in most cases involving monetary values. However, in cases where monetary values were generated by computer or other systemic methodology, the examiners applied a zero dollar (\$0) tolerance level in order to identify possible system errors.

Prior Examinations

Aviva has not been the subject of any prior market conduct or financial examination by the Division.

Company Operations and Management

The examiners reviewed Company management, organization, quality controls, record retention, antifraud plan including referral and investigation procedures for fraud allegation against a producer, and timely cooperation throughout the MCE process.

Marketing and Sales

Aviva provided a listing of all the advertising and sales materials utilized during the period under examination. There were fifty-two (52) annuity marketing brochures listed, most of which had multiple versions for a total of 148 entries. The examiners reviewed sixteen (16) annuity product brochures used in Colorado during the MCE period.

Complaint Handling

Aviva provided its complaint handling guidelines and/or procedures and a listing of twenty-two (22) Colorado complaints received during the MCE period. All complaints were reviewed for compliance with Colorado insurance law.

Producers/Agents

Aviva provided licensing information for 976 agents determined to have represented the Company during the MCE period. All of the agents of record for the sampled newly issued underwriting files were reviewed to determine if the writing agents were licensed/appointed at the time of application.

Forms

Aviva provided the listing of forms that it had determined were in use during the period under examination. The following forms were reviewed for compliance with Colorado insurance law.

<u>Form Name/Number</u>	<u>Date</u>
Supplemental Application/Form 11501	2/07
Application For Policy Change/11800	7/09
Application For Reissue/11801	7/09
Application to Convert Term Insurance/11804 7/09	7/09
Application for Insurance/Form 15656	2/07
Life Insurance Application for Simplified/Guarantee Issue/Form 17146	4/09
American Investors Life Ins. Co form AILAPP	06/06
Application For Reinstatement and Insurability Statement/11802	5/98
Application for Single Premium Immediate Annuity/SPIA APP	6/84
SPIA Plus Application/SPIA APP	6/00
American Investors Life Ins. Co form 55233	No Date
Term Life Insurance/2TAF05R	11/07
Flexible Premium Adjustable Life Insurance With No Lapse Guarantee/2UCA09	No Date
Flexible Premium Life Insurance/2UBJ05R	11/07
Flexible Premium Adjustable Life Insurance/2UAA09	No Date
Last Survivor Flexible Premium Adjustable Life Insurance With Indexed Feature/2JAF06R	11/07
Flexible Premium Life Insurance With Indexed Feature/2EBJ05R	11/07
Term Life Insurance/2TAF05R	11/07

New Business

As part of the annuity application sample, the examiners requested suitability information to verify compliance with Company policies and procedures and Colorado laws and regulations. The information was reviewed and findings issued. A subsequent internet search revealed a class-action settlement by Aviva during the examination period involving sales and suitability issues. The examiners requested information from the Company to ascertain the issues, eligibility of, and notification to Colorado residents.

Aviva provided its population of annuity contracts issued during the examination period. The policy listing was numbered and Microsoft Excel's Random Number Generator (RAND) function was used to generate a random sample of 108 policy files from a total population of 2,185 newly issued individual annuity contracts. Policy files were reviewed for compliance with Colorado laws and Company guidelines when applicable.

Aviva provided its population of individual life contracts issued during the examination period. The policy listing was numbered and Microsoft Excel's Random Number Generator (RAND) function was used to generate a random sample of 107 policy files from a total population of 1,006 newly issued life contracts. Policy files were reviewed for compliance with Colorado law and Company guidelines when applicable.

Aviva provided its individual life and annuity replacement logs. The listings were combined and Microsoft Excel's (RAND) function was used to generate a random sample of 114 policy files from a total population of 1,250 logged replacements. Policy files were requested and reviewed for compliance with Colorado law.

Declinations

Aviva provided the population of individual life applications declined during the examination period. The Company furnished a listing of eighty-two (82) files. The examiners reviewed all eighty-two (82) files for compliance with Colorado insurance law.

Claims

Aviva provided the population of seventy-five (75) individual life and eighty-two (82) annuity claims paid or denied during the examination period. All files were reviewed for compliance with Colorado insurance law.

EXAMINATION REPORT SUMMARY

The examination resulted in a total of seven (7) findings in which Aviva was not in compliance with Colorado Insurance Statutes and Regulations. The following is a summary of the examiners' findings.

Company Operations and Management: In the area of Company Operations and Management, no issues are addressed in this report.

Marketing and Sales: In the area of Company Marketing and Sales, no issues are addressed in this report.

Complaints: In the area of Complaints, no issues are addressed in this report.

Producers: In the area of Producers, no issues are addressed in this report.

Contract Forms: The examiners identified four (4) issues in their review of Aviva's contract forms.

Issue E1: Failure of Aviva's application forms to include a fraud statement that is substantially the same as the statement required by Colorado insurance law.

Issue E2: Use of non-complying authorization forms regarding disclosure of nonpublic personal health information.

Issue E3: Non-complying suicide provision.

Issue E4: Use, in some instances, of a non-complying premium payment provision.

Underwriting: The examiners identified three (3) issues in their review of Aviva's underwriting.

Issue G1: Failure, in some instances, to properly review annuity applications for suitability in replacement transactions.

Issue G2: Failure, in some instances, to provide notification and/or timely notification to the contract owner of the right to receive current policy information upon replacement of an existing contract.

Issue G3: Failure, in some instances, to provide notification of replacement to existing insurers within the required time-frames.

Claim Handling: In the area of claim handling, no issues are addressed in this report.

A copy of the Market Conduct Report, if adopted pursuant to § 10-1-205(3)(a), C.R.S., and any subsequent response filed by the Company, if applicable, can be obtained upon request from the Division.

Results of previous market conduct examinations (if any) are available on the Division's website at www.dora.state.co.us/insurance or by contacting the Division.

FACTUAL FINDINGS

AVIVA LIFE AND ANNUITY COMPANY

CONTRACT FORMS

Issue E1: Failure of Aviva's application forms to include a fraud statement that is substantially the same as the statement required by Colorado insurance law.

Section 10-1-128, C.R.S., Fraudulent insurance act – immunity for furnishing information relating to suspected insurance fraud – legislative declaration, states in significant part:

...

- (6)(a) Each insurance company shall provide on all printed applications for insurance, or on all insurance policies, or on all claim forms provided and required by an insurance company, or required by law, whether printed or electronically transmitted, a statement, in conspicuous nature, permanently affixed to the application, insurance policy, or claim form substantially the same as the following:

“It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.” [Emphasis added.]

Aviva was not in compliance with Colorado insurance law in that, in some instances, its application forms contained a fraud statement that was not substantially the same as the statement required by Colorado insurance law or did not contain the required fraud statement. The examiners did not see any evidence of a fraud statement being used on either the claim forms or policies during the examination period.

The following application forms contained an incorrect fraud statement that read as follows:

“Any person who knowingly present a false or fraudulent claim for payment of a loss or benefit, or knowingly presents false information in an application for insurance may be guilty of a crime and subject to fines and confinement in prison, depending on state law.”

Form Number:

Date:

Supplemental Application/Form 11501	2/07
Application For Policy Change/11800	7/09
Application For Reissue/11801	7/09
Application to Convert Term Insurance/11804	7/09
Application for Insurance/Form 15656	2/07
Life Insurance Application for Simplified/Guarantee Issue/Form 17146	4/09

The following application forms did not contain any fraud warning statement.

Form Number:

Date:

Application For Policy Change/11800	5/98
Application For Reissue/11801	5/98

Application For Reinstatement and Insurability Statement/11802	5/98
Application for Single Premium Immediate Annuity/SPIA APP	6/84
SPIA Plus Application/SPIA APP	6/00
American Investors Life Ins. Co form 55233 (app file 643716)	No Date
American Investors Life Ins. Co form AILAPP (app files 613875 and 613876)	06/06

Recommendation No. 1:

Aviva shall be afforded a reasonable period, not exceeding thirty (30) days from the date of this report, to make written submission or rebuttal as to why it should not be considered in violation of § 10-1-128, C.R.S. In the event Aviva is unable to provide such documentation, it shall be required, within sixty (60) days from the date this report is adopted, to provide written evidence to the Division that it has implemented procedures and revised its forms to ensure that its applications, policies or claim forms, whether printed or electronic, contain the fraud warning mandated by Colorado insurance law. Within these sixty (60) days, Aviva shall also provide the Division with specimen copies of all forms containing a compliant fraud statement and provide the proposed date the forms will be implemented.

Issue E2: Use of non-complying authorization forms regarding disclosure of nonpublic personal health information.
--

Colorado Insurance Regulation 6-4-1, Privacy of Consumer Financial and Health Information, promulgated under the authority of §§ 10-1-108, 10-1-109, 10-5-117, 10-16-109, and 10-16-401(4)(o), C.R.S., states in part:

...

Section 18. Authorizations

- A. A valid authorization to disclose nonpublic personal health information pursuant to this Article V shall be in written or electronic form and shall contain all of the following:
- (1) The identity of the consumer or customer who is the subject of the nonpublic personal health information;
 - (2) A general description of the types of nonpublic personal health information to be disclosed;
 - (3) General description of the parties to whom the licensee discloses nonpublic personal health information, the purpose of the disclosure, how the information will be used and a prohibition against redisclosure or reuse of the disclosed information;
 - (4) The signature of the consumer or customer who is the subject of the nonpublic personal health information or the individual who is legally empowered to grant authority and the date signed; and
 - (5) *Notice of the length of time for which the authorization is valid and that the consumer or customer may revoke the authorization at any time and the procedure for making a revocation.*
- B. An authorization for the purposes of this Article V shall specify a length of time for which the authorization shall remain valid, *which in no event shall be more than twenty-four (24) months.* [Emphasis added.]

Aviva was not in compliance with Colorado insurance law in that its “Authorization and Acknowledgement” disclosures:

- Contained a length of time for the authorization to remain valid that is longer than allowed by Colorado insurance law and/or contained no time limit:

The Company’s forms stated in part:

“I agree that this authorization shall be valid for 2 1/2 (two and one half) years from the date shown below and that a photographic copy of this authorization shall be as valid as the original.”

Form:

Date:

Application for Reinstatement and Insurability Statement/11802	5/98
Application for Policy Change/11800	5/98

No time limit on authorization to disclose information:

Form:

Date:

Application for Reissue/11801	5/98
Application for Reinstatement and Insurability Statement/11802	5/98

- Did not contain a provision notifying the subject of the disclosure of nonpublic health information of the right to revoke the authorization at any time, and the procedure for doing so:

No Opt-Out Provision

Form:

Date:

Application for Policy Change/11800	5/98
Application for Reissue/11801	5/98
Application for Reinstatement and Insurability Statement/11802	5/98

- Contained an incorrect prohibition against re-disclosure or reuse of the disclosed information as required under Colorado insurance law or failed to provide the required prohibition:

The following forms contained an incorrect disclosure that stated:

“I understand any information disclosed under this authorization may no longer be covered by federal rules governing privacy and confidentiality of health information and may be subject to re-disclosure.”

Form:

Date:

Application for Insurance/Form 15656	2/07
Life Insurance Application for Simplified /Guaranteed Issue/Form 17146	4/09
Application for Policy Change/11800	7/09
Supplemental Application/Form 11501	2/07

The following forms contained no prohibition against re-disclosure or re-use of the disclosed information:

Form:

Date:

Application for Reissue/11801	5/98
Application for Reinstatement and Insurability Statement/11802	5/98

Recommendation No. 2:

Aviva shall be afforded a reasonable period, not exceeding thirty (30) days from the date of this report, to make written submission or rebuttal as to why it should not be considered in violation of Colorado Insurance Regulation 6-4-1. In the event the Company is unable to provide such documentation, it shall be required, within sixty (60) days from the date this report is adopted, to provide written evidence to the Division that it has implemented procedures and revised its forms to ensure that all “Authorization and Acknowledgement” disclosures comply with the requirements of Colorado insurance law. Within these sixty (60) days, Aviva shall also provide the Division with a specimen copy of an authorization to disclose nonpublic personal health information with corrected information and provide the proposed dates that the revision will be implemented.

Issue E3: Non-complying suicide provision.

Section 10-7-109, C.R.S., Suicide no defense for nonpayment, states in part:

The suicide of a policyholder after the *first policy year* of any life insurance policy issued by any life insurance company doing business in this state shall not be a defense against payment of a life insurance policy, whether said suicide was voluntary or involuntary, and whether said policyholder was sane or insane.
[Emphasis added.]

Aviva was not in compliance with Colorado insurance law in that the suicide provision included in its life insurance contracts failed to provide the correct time limit for liability under the policy as a result of an insured who commits suicide.

The Company's forms stated in part:

SUICIDE

If the Insured commits suicide, while sane or insane, during the *first two policy years*, our liability is limited to the amount of premium paid [less any premium loans, and less any withdrawals. If the Insured commits suicide, while sane or insane, within *two years* after the effective date of any increase in the Face Amount, our liability as to the increased amount is limited to the monthly deductions for the increase] [Emphases added.]

Form:

Date:

Term Life Insurance/2TAF05	R 11/07
Flexible Premium Adjustable Life Insurance With No Lapse Guarantee/2UCA09	No Date
Flexible Premium Life Insurance/2UBJ05	R 11/07
Flexible Premium Adjustable Life Insurance/2UAA09	No Date
Last Survivor Flexible Premium Adjustable Life Insurance With Indexed Feature/2JAF06	R 11/07
Flexible Premium Life Insurance With Indexed Feature/2EBJ05	R 11/07

Recommendation No. 3:

Aviva shall be afforded a reasonable period, not exceeding thirty (30) days from the date of this report, to make written submission or rebuttal as to why it should not be considered in violation of § 10-7-109, C.R.S. In the event Aviva is unable to show such proof, it shall be required, within sixty (60) days from the date this report is adopted, to provide written evidence to the Division that it has modified all life policies issued in Colorado to contain a suicide provision that is in compliance with Colorado insurance law. Within these sixty (60) days, Aviva shall also provide the Division with specimen copies of all life insurance policies currently marketed with a corrected suicide provision and the proposed date that it will be implemented on all new and existing policies issued within the past two years. The company shall also conduct a self-audit of all claims denied for suicide in the past five years and report the findings of the audit to the Division within ninety (90) days from the date this report is adopted.

Issue E4: Use, in some instances, of a non-complying premium payment provision.

Section 10-7-102, C.R.S., Life insurance policies - requirements, states in part:

- (1) It is unlawful for any foreign or domestic life insurance company to issue or deliver in this state any life insurance policy unless same contains the following provisions:
 - (a) A provision that *all premiums shall be payable in advance, either at the home office of the company or to an agent of the company*, upon delivery of a receipt signed by one or more of the duly authorized officers, unless the first payment is set forth in the policy, in which case the policy itself shall be a receipt. [Emphasis added.]

Aviva was not in compliance with Colorado insurance law in that the Payment of Premium provision of its contracts failed, in some instances, to provide the option for payment of premiums to an agent of the company.

The Company's forms stated in part:

Payment of Premiums: Premiums are payable on or before their due dates.
Premiums after the first premium are payable to the Home Office. Upon request, we will furnish a receipt signed by an authorized officer.

Form:

Date:

Term Life Insurance/2TAF05	R 11/07
Flexible Premium Adjustable Life Insurance With No Lapse Guarantee/2UCA09	No Date
Flexible Premium Life Insurance/2UBJ05	R 11/07
Flexible Premium Adjustable Life Insurance/2UAA09	No Date
Last Survivor Flexible Premium Adjustable Life Insurance With Indexed Feature/2JAF06	R 11/07
Flexible Premium Life Insurance With Indexed Feature/2EBJ05	R 11/07

Recommendation No. 4:

Aviva shall be afforded a reasonable period, not exceeding thirty (30) days from the date of this report, to make written submission or rebuttal as to why it should not be considered in violation of § 10-7-102, C.R.S. In the event Aviva is unable to show such documentation, it shall be required, within sixty (60) days from the date this report is adopted, to provide written evidence to the Division that it has modified the premium payment clause of all life insurance policies to state that premiums shall be paid in advance, either at the home office of the company or to an agent of the company as required by Colorado insurance law. Within these sixty (60) days, Aviva shall also provide the Division with specimen copies of all forms with corrected premium payment information and the proposed implementation date.

UNDERWRITING

Issue G1: Failure, in some instances, to properly review annuity applications for suitability in replacement transactions.

Colorado Insurance Regulation 4-1-11, Concerning Suitability in Annuity Transactions, promulgated under the authority of §§ 10-1-109 and 10-3-1110(1), C.R.S., states in part:

...

Section 5. Duties of Insurers and of Insurance Producers

- A. In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs.

...

- D. 1. An insurer either shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this regulation is established and maintained by complying with Paragraphs (3) to (5) of this subsection, or shall establish and maintain such a system, including, but not limited to:
 - a. Maintaining written procedures; and
 - b. Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this regulation.

Aviva's Suitability Policy document, Section 6.1, Suitability Review Process for Annuities, included the following seven steps:

1. The required Suitability Form for all Annuity applications is the basis of the first level of Review.
2. The New Business team reviews the form for completeness, communicating directly with the Agent or directly with the Applicant, when needed.
3. The Suitability Review Team (SRT) consists of several compliance department employees and is overseen by a Compliance Manager.
4. The SRT reviews a combined total pool of up to 50% of all applications prior to issue.
5. There are 3 ways applications are chosen to be in the reviewed pool:
 - I. *Red Flags identified by New Business team*
 - II. Randomly selected applications from the New Business work queue

- III. Applications selected according to specific targets based on risk profiles identified by Aviva USA, according to the requirements of the Model Regulation and other applicable laws.
6. The SRT reviews the complete policy file of selected applications.
7. The SRT has the decision-making authority as to whether the sales recommendation is suitable under the guidelines of the Model Suitability Rule and/or applicable laws. [Emphasis added.]

The Examiners reviewed a random sample of 108 of the 2,185 annuity applications files and noted fifteen (15) instances where information on the application contained “red flags” that did not result in referral to the Suitability Review Team prior to approval. Aviva is not in compliance with Colorado insurance law in that it failed to maintain a system for proper review of suitability of replacement activity.

Annuity Replacement Review

Population	Sample Size	Number of Exceptions	Total Error Rate
2,185	108	15	14%

Recommendation No. 5:

Aviva shall be afforded a reasonable period, not exceeding thirty (30) days from the date of this report, to make written submission or rebuttal as to why it should not be considered in violation of Colorado Insurance Regulation 4-1-11. In the event Aviva is unable to provide such documentation, it shall be required, within sixty (60) days from the date this report is adopted, to provide written evidence to the Division that it has modified its policies, practices and procedures regarding suitability review to comply with Colorado insurance law.

Issue G2: Failure, in some instances, to provide notification and/or timely notification to the contract owner of the right to receive current policy information upon replacement of an existing contract.

Colorado Insurance Regulation 4-1-4, Replacement of Life Insurance and Annuities, promulgated under the authority of §§ 10-1-109 and 10-3-1110(1), C.R.S., states in part:

...

Section 8. Duties of the Existing Insurer

Where a replacement is involved in the transaction, the existing insurer shall:

...

- B. Send a letter to the policy or contract owner of the right to receive information regarding the existing policy or contract values including, if available, an in force illustration or policy summary if an in force illustration cannot be produced within five (5) business days of receipt of a notice that an existing policy or contract is being replaced. The information shall be provided within five (5) business days of receipt of the request from the policy or contract owner.

A random sample of 114 annuity replacement files was selected from a population of 241. Ten (10) of the sample files were determined to be exempt from the replacement requirements and eliminated from the sample, resulting in a final sample of 104 files. Aviva was not in compliance with Colorado insurance law in that it either failed to provide, or failed to provide in a timely manner, notification to the contract owner of the right to receive information regarding the current value of an existing contract in forty (40) instances.

Annuity Replacement - Notification of insured

Population	Sample Size	Number of Exceptions	Total Error Rate
241	104	40	38%

Recommendation No. 6:

Aviva shall be afforded a reasonable period, not exceeding thirty (30) days from the date of this report, to make written submission or rebuttal as to why it should not be considered in violation of Colorado Insurance Regulation 4-1-4. In the event Aviva is unable to provide such documentation, it shall be required, within sixty (60) days from the date this report is adopted, to provide written evidence to the Division that it has modified its procedures or taken other action(s) to ensure that its replacement notification is in compliance with Colorado insurance law.

Issue G3: Failure, in some instances, to provide notification of replacement to existing insurers within the required time-frames.

Colorado Insurance Regulation 4-1-4, Replacement of Life Insurance Policies and Annuities, promulgated under the authority of §§ 10-1-109 and 10-3-1110(1), C.R.S., states in part:

...

Section 7. Duties of Replacing Insurers that Use Producers

A. Where a replacement is involved in the transaction, the replacing insurer shall:

(1) Verify that the required forms are received and are in compliance with this regulation;

(2) *Notify any other existing insurer that may be affected by the replacement within five (5) business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application*, and mail a copy of the available illustration or policy summary for the proposed policy or available disclosure document for the proposed contract within five (5) business days of a request from an existing insurer; [Emphasis added.]

A random sample of 114 life or annuity replacements from a total population of 1,250 files included on Aviva's replacement logs was reviewed. Fifteen (15) of the 114 files were determined to be either exempt from the replacement regulation or internal replacements and therefore not subject to the notification requirement, resulting in a final sample of ninety-nine (99) replacement files subject to the notification requirement.

In twenty-eight (28) instances, Aviva was not in compliance with Colorado insurance law in that it failed to notify the existing insurer within five (5) business days of receipt of a completed application indicating replacement of an existing contract.

External Replacement Notification

Population	Sample Size	Number of Exceptions	Total Error Rate
1,250	99	28	28%

Recommendation No. 7:

Aviva shall be afforded a reasonable period, not exceeding thirty (30) days from the date of this report, to make written submission or rebuttal as to why it should not be considered in violation of Colorado Insurance Regulation 4-1-4. In the event Aviva is unable to provide such documentation, it shall be required, within sixty (60) days from the date this report is adopted, to provide written evidence to the Division that it has modified its procedures and taken all other actions necessary to ensure compliance of its replacement notification procedures with Colorado insurance law.

SUMMARY OF ISSUES AND RECOMMENDATIONS		Rec. No.	Page No.
CONTRACT FORMS			
Issue E1: Failure of Aviva's application forms to include a fraud statement that is substantially the same as the statement required by Colorado insurance law.		1	13
Issue E2: Use of non-complying authorization forms regarding disclosure of nonpublic personal health information.		2	16
Issue E3: Non-complying suicide provision.		3	17
Issue E4: Use, in some instances, of a non-complying premium payment provision.		4	18
UNDERWRITING			
Issue G1: Failure, in some instances, to properly review annuity applications for suitability in replacement transactions.		5	21
Issue G2: Failure, in some instances, to provide notification and/or timely notification to the contract owner of the right to receive current policy information upon replacement of an existing contract.		6	22
Issue G3: Failure, in some instances, to provide notification of replacement to existing insurers within the required time-frames.		7	23

Examination Report Submission

State Market Conduct Examiners

**Jeffory A. Olson, CIE, MCM, FLMI, AIRC, ALHC
Examiner-In-Charge**

David M. Tucker, AIE, FLMI, ACS

And

Independent Contract Examiner

Earl C. Brown, AIE, CLU, ChFC

Submit this verified report on this 20th day of September, 2011 on behalf of:

**The Colorado Division of Insurance
1560 Broadway, Suite 850
Denver, Colorado 80202**